

THE
STATUTES AT LARGE
OF THE
STATE OF MINNESOTA

COMPRISING

THE GENERAL STATUTES OF 1866

As amended by subsequent Legislation to the close of the Session of 1873

TOGETHER WITH

ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, A.D. 1873

WITH REFERENCES TO

JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER
STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT,
THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA

VOL. I.

COMPILED AND ARRANGED BY

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CHAPTER XXXVI.

OF FRAUDS.

(This Chapter is Chapter XLI. of the Statutes of 1866.)

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TITLE I.

CONVEYANCES OF LANDS FRAUDULENT AS AGAINST PURCHASERS.

SECTION 1. *Conveyance void, when.*—Every conveyance of any estate or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, as against any such purchasers, shall be void.

Greenleaf *v.* Edes, 2 Minn. 264; Lemay *v.* Bibeau, 2 Minn. 291; Banning *v.* Sibley, 3 Minn. 391; Truett *v.* Caldwell, 3 Minn. 364; Scott *v.* Edes, 3 Minn. 377; Filley *v.* Register, 4 Minn. 391. 23 Wis. 106.

SEC. 2. *Not fraudulent unless grantee was privy to the fraud.*—No such conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser who had actual or legal notice thereof at the time of his purchase, unless it appears that the grantee in such conveyance, or person to be benefited by such change, was privy to the fraud intended.

23 Wis. 106.

SEC. 3. *Conveyance void as against subsequent purchasers, when.*—Every conveyance or charge of or upon any estate or interest in lands, containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers, from such grantor, for a valuable consideration, of any estate or interest, so liable to be revoked or determined, although the same is not expressly revoked, determined, or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

SEC. 4. *Conveyance by person to whom revocation has been given, valid.*—When a power to revoke a conveyance of any lands or the rents and profits thereof, and to reconvey the same, is given to any person other than the grantor in such conveyance, and such person thereafter conveys the same land, rents, or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation was recited therein, and the intent to revoke the former conveyance expressly declared.

SEC. 5. *Conveyance under either of preceding sections, valid.*—If a conveyance to a purchaser under either of the two preceding sections is made before the person making the same is entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation actually vests in such person, in the same manner and to the same extent, as if then made.

TITLE II.

STATUTE OF FRAUDS.

SEC. 6. *No action maintainable on agreement, when.*—No action shall be maintained in either of the following cases upon any agreement unless such agreement or some note or memorandum thereof expressing the consideration, is in writing, and subscribed by the party charged therewith :

First. Every agreement that by its terms is not to be performed within one year from the making thereof ;

Second. Every special promise to answer for the debt, default, or doings of another ;

Third. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promise to marry.

Dufolt v. Gorman, 1 Minn. 301 ; *Phipps v. M'Farlane*, 3 Minn. 109 ; *Walker v. M'Donald*, 5 Minn. 455 ; *Yale v. Edgerton*, 14 Minn. 194 ; *Goetz v. Foos*, 14 Minn. 265 ; *Hodgins v. Heaney*, 15 Minn. 185 ; *Rogers v. Stevenson*, 16 Minn. 68. 1 Wis. 77 ; 4 Wis. 190 ; 7 Wis. 413 ; 13 Wis. 546 ; 16 Wis. 557 ; 19 Wis. 231 ; 21 Wis. 415 ; 3 Chand. 31.

SEC. 7. *Contracts for sale of goods for price of \$50 or more, valid when.*—Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or more, shall be void, unless—

First. A note or memorandum of such contract is made in writing, and subscribed by the parties to be charged therewith ; or,

Second. Unless the buyer accepts and receives part of such goods, or the evidences, or some of them, of such things in action ; or,

Third. Unless the buyer at the time pays some part of the purchase money.

Morin v. Marty, 13 Minn. 191 ; *M'Carthy v. Nash*, 14 Minn. 127 ; *Demplo v. Knopf*, 15 Minn. 440. 17 Wis. 97 ; 20 Wis. 142 ; 21 Wis. 415 ; 23 Wis. 244 ; 24 Wis. 540.

SEC. 8. *Auctioneer's memorandum to be deemed note of contract.*—Whenever goods are sold at public auction, and the auctioneer at the time of sale enters into a sale-book a memorandum specifying the nature and price of the property sold, the terms of the sale, name of the purchaser, and the name of the person on whose account the sale is made ; such memorandum shall be deemed a note of the contract of sale within the meaning of the last section.

SEC. 9. *Grants of trusts void unless in writing.*—Every grant or assignment of any existing trust in goods or things in action, unless the same is in writing, subscribed by the party making the same, or by his agent, lawfully authorized, shall be void.

SEC. 10. *Conveyance of land to be in writing.*—No estate or interest in lands other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the parties creating, granting, assigning, surrendering, or declaring the same, or by their lawful agent thereunto authorized by writing.

Wentworth v. Wentworth, 2 Minn. 277; *Saeger v. Burns*, 4 Minn. 141; *Gardner v. M'Clure*, 6 Minn. 250; *Arnold v. Wainwright*, 6 Minn. 358. 7 Wis. 413, 551; 8 Wis. 141; 13 Wis. 488; 14 Wis. 630; 19 Wis. 480; 22 Wis. 551; 24 Wis. 461.

SEC. 11. *Limitation of preceding section.*—The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament; nor to prevent any trust from arising or being extinguished by implication or operation of law.

SEC. 12. *Contracts for lease or sale of land valid, when.*—Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party by whom the lease or sale is to be made, or by his authorized agent.

Chandler v. Kent, 8 Minn. 524; *Sharpe v. Rogers*, 10 Minn. 207; *Lauz v. M'Laughlin*, 14 Minn. 72; *Conner v. Baldwin*, 16 Minn. 172. 8 Wis. 245; 13 Wis. 142; 14 Wis. 630.

SEC. 13. *Title (chapter) does not abridge powers of courts of equity.*—Nothing in this title (chapter) contained shall be construed to abridge the power of courts of equity to compel the specific performance of agreements in cases of part performance of such agreements.

TITLE III.

CONVEYANCES RELATIVE TO LANDS, GOODS, AND CHATTELS

FRAUDULENT AS AGAINST CREDITORS.

SEC. 14. *Conveyances of personal property void, when.*—All deeds of gift, all conveyances and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void, as against the creditors existing or subsequent of such person.

Truitt v. Caldwell, 3 Minn. 364; *Chopard v. Bayard*, 4 Minn. 523. 1 Chand. 40; 4 Chand. 46; 2 Wis. 292; 8 Wis. 471; 9 Wis. 352; 11 Wis. 196; 13 Wis. 283; 19 Wis. 583; 20 Wis. 536.

SEC. 15. *Sale of chattels presumed void, when.*—Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same is accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things sold or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor or assignor, or subsequent purchasers in good faith, unless those claim-

ing under such sale or assignment make it appear that the same was made in good faith, and without any intent to hinder, delay, or defraud such creditors or purchasers.

SEC. 16. *Term "creditors" defined.*—The term "creditors" as used in the preceding section, includes all persons who are creditors of the vendor or assignor, at any time while such goods and chattels remain in his possession, or under his control.

SEC. 17. *Limitation of two preceding sections.*—Nothing contained in the two preceding sections shall apply to contracts of bottomry or respondentia, nor assignments or hypothecations of vessels or goods at sea or in foreign ports, or without this state: *provided*, the assignee or mortgagee takes possession of such vessel or goods as soon as possible, after the arrival thereof, within this state.

SEC. 18. *Conveyances made with intent to hinder, delay, or defraud creditors, void.*—Every conveyance or assignment in writing or otherwise, of any estate or interest in lands, or of any rents or profits issuing therefrom, and every charge upon lands or upon the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful actions, damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, actions commenced, order or judgment suffered, with the like intent as against the persons so hindered, delayed, or defrauded, shall be void.

Scott v. Edes, 3 Minn. 377; *Banning v. Sibley*, 3 Minn. 389; *Ferguson v. Kumler*, 11 Minn. 104; *Gorton v. Massey*, 12 Minn. 145; *Blackman v. Wheatman*, 13 Minn. 326. 11 Wis. 364; 12 Wis. 393, 364; 13 Wis. 460, 445; 14 Wis. 487.

SEC. 19. *Conveyances void as to creditors, void as to heirs.*—Every conveyance, charge, instrument, or proceeding, declared to be void by the provisions of this and the two preceding titles, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives, or assignees of such creditors or purchasers.

SEC. 20. *Fraudulent intent, a question of fact.*—The question of fraudulent intent in all cases arising under the provisions of this title shall be deemed a question of fact, and not of law, and no conveyance or charge shall be adjudged fraudulent as against creditors, solely on the ground that it was not founded on a valuable consideration.

Gere v. Murray, 6 Minn. 305.

SEC. 21. *Purchaser without notice protected.*—The provisions of this title shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it appears that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Gere v. Murray, 6 Minn. 305.

SEC. 22. *Term "conveyance" defined.*—The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered.